

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 09, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM TROY TOMBLIN (2),

Defendant.

NO: 2:11-CR-12-RMP-2

ORDER ON MOTION FOR
SENTENCE REDUCTION UNDER 18
U.S.C. § 3582(c)(1)(A)

(COMPASSIONATE RELEASE)

Upon motion of the Defendant, William Troy Tomblin, for a reduction in sentence under 18 U.S.C. § 3582(c)(1)(A), and after considering the applicable factors provided in 18 U.S.C. § 3553(a) and the applicable policy statements issued by the Sentencing Commission, the Court finds that compassionate release is not supported by the facts of this case.

Defendant previously had requested compassionate release from the warden at his facility, ECF No. 183 at 20, and the warden denied that request more than thirty days prior to Defendant's motion in this court. ECF No. 183 at 19. Defendant

ORDER ON MOTION FOR SENTENCE REDUCTION UNDER 18 U.S.C. §
3582(c)(1)(A)
(COMPASSIONATE RELEASE) ~ 1

1 represents that any further appeal through the BOP process would be futile because
2 the same BOP personnel would be the appellate decision makers. ECF No. 183 at 11.

3 Defendant represents that compassionate release is justified because he is 49
4 years old and has high blood pressure and hypertension. ECF No. 183 at 14.

5 Defendant further represents that he has worked at UNICOR for six years, has had no
6 disciplinary incidents, and has remained alcohol and drug free since his incarceration.

7 *Id.* Defendant argues that he has completed extensive programming and that his
8 security level has been reduced from medium-high to a low classification. *Id.* More
9 urgently, Mr. Tomblin argues that the COVID-19 pandemic presents him with a high
10 risk of serious illness while incarcerated. *Id.* at 13-14; ECF No. 201.

11 The Government disputes that Defendant is an appropriate candidate for
12 compassionate release, in part because of his failure to exhaust administrative
13 remedies, but defers to the Court to determine whether Defendant has exhausted
14 administrative remedies. ECF No. 192 at 6. The Government further argues that Mr.
15 Tomblin has failed to demonstrate why the COVID-19 pandemic presents an
16 “extraordinary and compelling reason” justifying compassionate release for Mr.
17 Tomblin. *Id.*

18 Federal Rule of Criminal Procedure 35 generally delineates the parameters of
19 a district court’s ability to modify a prison sentence once judgment is entered. That
20 provision offers no relief to Mr. Tomblin. However, 18 U.S.C. § 3582(c)(1)(A)
21 provides an opportunity for a reduced sentence if, after the Court considers the

1 factors under 18 U.S.C. § 3553(a) to the extent that they are applicable, the Court
 2 finds that “extraordinary and compelling reasons warrant such a reduction” and the
 3 reduction is “consistent with applicable policy statements issued by the Sentencing
 4 Commission[.]”

5 The U.S. Sentencing Commission has issued a policy statement recognizing
 6 certain circumstances as “extraordinary and compelling reasons” for purposes of
 7 compassionate release, so long as “the defendant is not a danger to the safety of any
 8 other person or to the community, as provided in 18 U.S.C. § 3142(g)”:

9 (A) Medical Condition of the Defendant.—

10 (i) The defendant is suffering from a terminal illness (i.e., a
 serious physical and advanced illness with an end of life
 trajectory)

11 (ii) The defendant is—

12 (I) suffering from a serious physical or medical condition,

13 (II) suffering from a serious functional or cognitive
 impairment, or

14 (III) experiencing deteriorating physical or mental health
 because of the aging process,

15 that ‘substantially diminishes the ability of the
 defendant to provide self-care within the environment
 of a correctional facility and from which he or she is
 not expected to recover.’

16 (B) Age of the Defendant.—The defendant (i) is at least 65 years old;
 17 (ii) is experiencing a serious deterioration in physical or mental
 health because of the aging process; and (iii) has served at least 10
 18 years or 75 percent of his or her term of imprisonment, whichever
 is less.

19 (C) Family Circumstances—

20 (i) The death or incapacitation of the caregiver of the
 defendant’s minor child or minor children.

21 (ii) The incapacitation of the defendant’s spouse or registered
 partner when the defendant would be the only available
 caregiver for the spouse or registered partner.

1 (D)Other Reasons—As determined by the Director of the Bureau of
2 Prisons, there exists in the defendant’s case an extraordinary and
3 compelling reason other than, or in combination with, the reasons
described in subdivisions (A) through (C).

4 U.S. Sentencing Guidelines Manual (“USSG”) § 1B1.13.

5 Until December 21, 2018, the Court could reduce a term of imprisonment for
6 extraordinary and compelling reasons only upon motion by the Director of the
7 United States Bureau of Prisons (“BOP”). Following enactment of the First Step
8 Act, a federal prisoner may move on his own behalf for a sentence reduction and
9 compassionate release after exhausting all administrative appeals of the BOP’s
10 refusal to bring such a motion or after “lapse of 30 days from the receipt of such a
11 request by the warden of the defendant’s facility, whichever is earlier.” 18 U.S.C. §
12 3582(c)(1)(A). Section 1B1.13, USSG, has not been updated since enactment of the
First Step Act.¹

13 Mr. Tomblin applied to Warden Greilick at FCI Englewood for compassionate
14 release on April 28, 2020. ECF No. 183 at 20. The warden denied his motion on
15 May 29, 2020. ECF No. 183 at 19. Mr. Tomblin filed the current motion in this
16 Court on July 7, 2020, more than thirty days after the warden’s denial of his motion
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19

20 ¹ The Court takes judicial notice that as of the date of this order, there are an
21 insufficient number of confirmed commissioners to comprise a quorum for
purposes of amending the USSG.

1 to the BOP. Therefore, the Court finds that Mr. Tomblin's motion for compassionate
2 release is timely and that this Court has jurisdiction to consider his motion.

3 The Court next turns to whether Mr. Tomblin has presented a basis to support
4 that he has "extraordinary and compelling" circumstances that would justify
5 compassionate release in light of both 18 U.S.C. § 3582(c) and 18 U.S.C. §3553(a),
6 which the United States Sentencing Commission directs courts to consider. U.S.S.G
7 § 1B1.13.

8 Mr. Tomblin relies on the fact that he is 49 years old, has a history of
9 hypertension or high blood pressure, and that COVID-19 is causing significant issues
10 in the incarcerated population. ECF No. 183; ECF No. 201. Although Mr. Tomblin
11 supplemented his medical records and information after the Government responded
12 to this motion, the supplemental records and citations to general health information
13 do not support the conclusion that Mr. Tomblin's hypertension is uncontrolled, as
14 argued by Defendant. ECF No. 201 at 8. As conceded by Defendant, Mr. Tomblin's
15 blood pressure has been monitored regularly as recently as March 26, 2020, and BOP
16 medical officials have Mr. Tomblin on prescribed medication that controls high blood
17 pressure. ECF No. 201-1 at 22. Therefore, the Court does not find that Mr.
18 Tomblin's age of 49 years or his medicated control of high blood pressure create
19 "extraordinary or compelling reasons" to reduce his sentence. See 18 U.S.C. §
20 3582(c)(1)(A)(i).

1 The remainder of Mr. Tomblin's argument concerns the general danger that
2 COVID-19 creates, especially for those individuals incarcerated in prisons. ECF No.
3 183; ECF No. 201. However, as the Government notes, the threat presented by
4 COVID-19 is not limited just to incarcerated populations and the pandemic is being
5 actively managed by the BOP within federal institutions in a responsible manner.
6 ECF No. 192 at 2. The Court does not accept the existence of COVID-19 in a BOP
7 facility as a basis for releasing the inmates of that facility. If the Court adopted that
8 conclusion, then most, if not all, incarcerated individuals would need to be released,
9 which the Court does not find practicable.

10 Moreover, the factors to be considered in imposing a sentence under 18 U.S.C.
11 §3553(a) further weigh against compassionate release for Mr. Tomblin, especially
12 "the nature and circumstances of the offense and the history and characteristics of the
13 defendant." 18 U.S.C. §3553(a)(1). Mr. Tomblin's presentence investigation report
14 revealed that Mr. Tomblin qualified as a career offender pursuant to U.S.S.G.
15 §4B1.1(a) due to two prior drug related convictions. Although Mr. Tomblin entered
16 into a binding plea agreement pursuant to Fed. R. Crim. P. 11(c)(1)(C) requiring him
17 to plead guilty to possession with intent to distribute at least 5 grams of
18 methamphetamine, Mr. Tomblin had been indicted for a far larger amount of drugs
19 by the grand jury. As part of the plea agreement, the Government agreed not to file
20 an enhancement that would have increased Mr. Tomblin's mandatory minimum
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1 sentence to twenty years of incarceration. Rather the parties agreed to a sixteen-year
2 term of imprisonment in the binding plea agreement.

3 In addition, Mr. Tomblin's personal history weighs against early release.
4 Although Mr. Tomblin now argues that he has been alcohol and drug free since being
5 incarcerated, Mr. Tomblin informed the probation officer that prior to his arrest for
6 the current offense that he had consumed methamphetamine on a daily basis for the
7 previous nine years.

8 The Court finds that Mr. Tomblin's significant drug use history, combined
9 with his serious drug related convictions, indicates that his release would present a
10 likelihood of future crimes by the defendant. *See* 18 U.S.C. § 3553(a)(2)(C).

11 Moreover, the nature of the crimes, distribution of large quantities of
12 methamphetamine, present a risk of danger to others in the community. *See* 18
13 U.S.C. § 3142(g). Therefore, the Court concludes that the § 3553 factors weigh
14 against allowing Mr. Tomblin compassionate release under the circumstances
15 presented in his motion.

16 Accordingly, **IT IS HEREBY ORDERED** that Defendant's Motion for
17 Compassionate Release, **ECF No. 183**, is **DENIED**.

18 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this Order
19 and provide copies to counsel and to the U.S. Probation Office.

20 **DATED** September 9, 2020.

s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
United States District Judge